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OF THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

WITH

MEMBERS

OF THE

COMMITTEE'S NATIONAL ADVISORY COUNCIL

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The CHAIRMAN. I would like to take this opportunity to welcome all of you in an official sense.

Let me say that I would like to express a deep appreciation for the input which many of you have already had into the work of this committee. I mean that in the sense that the Senate Small Business Committee, in the past couple of years, more so than any other committee on the Hill, has been doing the people's work, in the sense of not trying to represent ourselves or our parties or our viewpoint of what small business should be but, in effect, trying to represent small business.

I just feel very good about the fact that we are not wandering off on some tangent of our own. But rather, thanks to your efforts and your advice, we are, on a day-to-day basis, really doing what comes out of the meetings we have had since your inception. So I want to express a real thank you to each one of you here.

This afternoon, we are going to have meetings with various Senators as we continue this listening process. I have a note which Bob Dotchin has written for me as to who is going to be here, and that includes Senator Rudman of New Hampshire and Senator Pressler of South Dakota, Senator Nunn of Georgia, Senator Baucus of Montana, Senator Boren of Oklahoma. I see Senator Kasten has just joined us, and he is the first speaker on your agenda. Then there is the possibility that Senators Gorton, Nickles, Bumpers, and Levin will be here.

I will tell you, Bob Kasten is, to me, one of the real bright lights in the U.S. Senate. He always will be, as will so many other individuals, if they would only take what was given and what they have acquired over the years and use it.

Are there any questions, before I turn it over to Shaw. I know Shaw wants to go right to Bob Kasten.

I might add that yesterday, knowing that I was going to be here and with Bob Dotchin in my office with this gavel in his hand, standing over me, I cosponsored Bob Kasten's bill on product liability. I will tell you how new that news is. I had lunch with Shaw and I told him, "You know, I cosponsored Bob Kasten's piece of legislation on product liability?" He said, "No, you didn't." I said, "I did. I did it yesterday." That is the truth of the matter.

We now are being joined by Senator Levin of Michigan. Are there any questions that I can respond to before turning to that portion of our session that will start in a minute with Senator Kasten?

Senator KASTEN. Mr. Chairman, thank you. I would be anxious to reply to any questions that anyone on the committee has on the question of product liability. I think all of you know that it really is a critical small business issue. It is more important, frankly, for small businesses than it is for larger businesses, because the larger businesses

find themselves better able to insure themselves against product liability, and also the larger businesses often have more resources, in terms of legal and other kinds of help.

In the couple of years of hearings that we have had on this legislation, we have had numerous small businessmen and women appear before our committee and give us a list of cases that at this particular moment are pending against them, any one of which could knock them out of business. We talked to small business group after small business group. This is a very important issue.

As I believe all of you understand, what we are trying to do in this legislation is simply to pinpoint the responsibility on that group, that person or persons, on the manufacturer, the retailer, the wholesaler, or whoever is responsible if, in fact, a product was unsafe or unfit. In other words, in no way are we trying to limit the right of injured parties to receive their just award. In some cases, we are doing things for consumers which certain States have not done. The main thing we are doing is to establish a uniformity, a predictability, and I believe it is going to work in the interest of consumers and business as well.

I have just one brief statistic. In this area of the law right now, we are spending 77 cents in legal fees for every 66 cents that injured claimants recover. That is how garbled the system is. Of course, all those fees are passed down to consumers.

I am very pleased, Senator, in your cosponsorship of our legislation, S. 44, and I am anxious to respond to questions. We have staff counsel from the Consumer Subcommittee of the Commerce Committee who has worked on three or four drafts of this legislation which has led to S. 44. She is with us also, so if there are specific questions, we would be anxious to respond.

Mr. WALTERS. Senator, on the 31 States, will your bill as proposed put through certain uniform things that they will go by? Is that the purpose of it?

Senator KASTEN. That is right. In the late 1970's, the Commerce Department commissioned a study and came up with a set of guidelines and a uniform bill that they hoped would be adopted like the Uniform Commercial Code was, State-by-State, so that there would be uniformity and predictability. The 31 States that have now adopted some kind of legislation, no one State adopted the legislation as it was recommended, and no one State is the same as any other. So you have a patchwork State-by-State.

That would be fine, if everything we made in the State of Wisconsin was used in the State of Wisconsin. Then we could work in the State of Wisconsin. The fact is that most of the things that we manufacture in Wisconsin are used in other States, so whatever the State does, it does not solve the problem. So we are establishing a national set of guidelines and standards so that there will be predictability and uniformity.

Mr. WALTERS. Would this be handled in the Federal courts, or would it be handled within the local courts within State jurisdictions?

Senator KASTEN. It changes. The issues are in all different courts, and this has nothing to do with changing any of the courts. Federal courts are handling more and more of these cases, unfortunately,

but we in no way change anything happening in the courts and in no way override any case law. I also ought to point out, because I know it is of interest to this advisory council, there is no new bureaucracy, no Federal funds. It simply is establishing uniform laws.

With Senator Weicker's name, we now have 16 cosponsors. I just would point out to you that if we could talk about a range of people, we have John Glenn, Democrat from Ohio, as a cosponsor on this bill. We have Jesse Helms and Bill Armstrong on there. So there is a spectrum, and in between we have 16 different Senators.

The CHAIRMAN. Before Bob continues discussing product liability, Senator Nunn the ranking member of the Small Business Committee, has joined us. Please continue with your questioning, but also if you have questions of any of the other Senators, feel free to fire away.

Mr. WALTERS. Do you feel, Senator, that once the Federal law was passed, you might have a cleanup of State laws at the same time?

Senator KASTEN. By being passed, it will preempt State laws, so we will establish a uniform set of laws so that we will be predictable across the country. Uniform standards is what we are establishing here.

Mr. STANLEY. Does that mean the States still could come forward with something that would be more restrictive?

Senator KASTEN. No. In some cases, States have things which are more restrictive. The answer to your question is no; they could not be less or more. We would set a uniform standard.

Mr. MUDGE. Mr. Mohs.

Mr. MOHS. This is my first time here, so I am very happy to see that this legislation is being put forth. I am a lawyer, and with all due respect to some of my associates in the personal injury bar, I think it is time for some statemanship on their behalf. The figures on how much goes to lawyers are quite telling. Certainly, the legal profession is doing very well at this, but it is truly a very difficult and expensive situation for small businesses. I know my brother has a plastic thermoforming business, and he makes products most of which I assume are consumed in Wisconsin or at least in the Midwest but no doubt they get as far as Hawaii and other States or, even worse, California.

California is a whole different world, in terms of product liability. There are legal "bounty hunters" out there who advertise in the paper, "Have you used X product?" They get fantastic awards under quite a different system of laws than we have back in Wisconsin and a different type of jury. All this adds up to expensive product liability insurance for small businesses. If there were uniformity in this area, predictability would be substantially increased, and predictability should be to lower insurance premiums.

This is an area where I have seen small businesses actually not go into an area because they are so worried about product liability, especially where it involves food or drugs. They will just pass on the advice of counsel. So I think this is an excellent piece of legislation.

Mr. MUDGE. Thank you.

Walter Floss from New York.

Mr. FLOSS. I sent everyone a copy of my report, which was something I had been working on in the New York State Senate for 3 years. I knew it was difficult. One member of the bar mentioned that there is a lot of self-interest in keeping tort liability as it is. In the New York State study, it was shown that when we enacted no-fault auto insurance, the shift of looking for things to litigate moved very quickly to product liability. The number and the amount of claims that were instituted after no-fault auto insurance went into effect shows that it was a sort of a make-work process.

Very realistically, I do not think that any one State should address it by themselves. As I say in my study, we are going to do something if we have to wait on Congress much longer. We have nitpicked at some of the most glaring inequities with certain types of bills. But my strong recommendation in this report which you all received was that we support a Federal law which would, of course, supersede any State legislation.

That is one of the things that I felt happy was being addressed today, because I have felt that this is one of the most important. Now, what has this to do with small business, we have gone through hearing after hearing with small business people. I have actually sent a staffer out in the field with one of the questions, "What effect is there on the products that you manufacture through product liability exposure?"

The most glaring one is an industry in my own district which makes medical monitoring systems. They will not manufacture them in New York State or in the United States. They have a plant for the European market in Israel to make this particular product. They will not bring it back here because if they are monitoring somebody that is going to die anyway but he dies, they are afraid they are going to be involved. The reason the principals stopped manufacturing here is that he owns the business as a sole owner. His insurance 6 years ago was $35,000 per year, with a $100,000 deductible. It moved to $165,000 per year, with $1 million deductible. He said that with one claim, with that deductible, his business is gone and there are 300 people not working. Why jeopardize his own equity and all the jobs of 300 people. So, rather than to expand and manufacture and market that product in the United States, he elected to let this market go and concentrate on that particular product being developed in an Israel plant, and he satisfies most of the European market in that way.

My point is that there probably are numbers of small business people who are not engaging in business or producing a product in all of our respective States because they cannot stand the exposure. Right now, they are having an easier time. My background is 35 years in the insurance business and only 5 years as a State senator. I might say to your business people, if you do not feel government is going to work fast enough for you, do what I did: Run for office, so you can start doing things yourself.

I really feel there would be a tremendous impact if we could resolve this problem. I think that we would then find smaller business people engaging in products that may, because they are more innovative, be more exportable. So we will be doing the things that we were talking about earlier this morning—increasing our exports. We certainly will be creating more jobs if we can manufacture more products. But right now, we have not hit the crucial time.

As Frank Swain told us at lunchtime, right now rates really are not that high. Well, that is true. We have what we call in the insurance industry a soft market. Insurance companies do not care where their profit comes from. It can be either underwriting profit or it can be under investment profit on their portfolio. Their portfolios have been developing such tremendous profit, with the yields being so high, interest high, that they have actually been underwriting insurance at an underwriting loss. Too many times the public do not believe it, but that is so.

As interest rates decline and their investment portfolio will start to shrink revenue, they will then have to underwrite and it will then become a harder market and rates will increase or exposures then will become uninsurable. We may, in fact, be even heavier on small businessmen who today are on a thin line when they find their costs go up or the opportunity to purchase coverage is no longer there. They will go out of that business, too.

I really hope that Senator Kasten is successful in moving this legislation, because I think then it certainly will help. It will start right from the bottom. It will help small businessmen first and help everybody. It will be one more step to the economy of the Nation.

Mr. MUDGE. Thank you very much, Mr. Floss. Would you be good enough to introduce a resolution to that effect?

Mr. FLOSS. Yes.

Mr. LEFKIADES. There are some comments contrary to the position. I do not think we should rubberstamp it.

Mr. FLOSS. I think I can introduce the resolution.

Mr. MUDGE. Let him introduce the resolution, and then you can make your comments.

Mr. FLOSS. You have all received a copy of the resolution in which we are supporting the bill, S. 44.

[Material follows:]

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The National Advisory Council to the Senate Committee on Small Business finds that:

WHEREAS the rules determining the liability of product sellers for product-related injuries has been developed almost exclusively by state judges on a case-by-base basis, varying from state to state, and sometimes in direct conflict;

WHEREAS modification of the case law tort system by 31 states has failed to uniformly outline the basic elements of product liability claims or to uniformly define standards for manufacturer responsibility;

WHEREAS because of this situation, manufacturers doing business in interstate markets and whose products may be found in any jurisdiction continue to face uncertainty about what rules of law may apply;

WHEREAS that uncertainty restricts the ability of many firms, especially small businesses, to sell their products in interstate markets;

WHEREAS that uncertainty can also lead to higher insurance costs which are reflected in higher consumer prices;

THEREFORE be it resolved that the National Advisory Council to the Senate Committee on Small Business urges the Chairman and Members of the Senate Small Business Committee to cosponsor and support S. 44, the Product Liability Act, as the best means of bringing uniformity and certainty to law and to stabilize what has become a serious burden on interstate commerce.

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Mr. FLOSS. I move at this time, Mr. Chairman, that we adopt this resolution.

Mr. BOWDEN. I second it.

Mr. MUDGE. Discussion? Mr. Lefkiades.

Mr. LEFKIADES. I would like to make a few brief comments in opposition to the bill. I realize this is a small business gathering, and we are in front of the Senate Small Business Committee, however, in good conscience, someone should stand up and speak for the wretched souls in wheelchairs.

This bill is a pet project of the insurance industry. They have advocated it, and they have tried to pass it as a bill for a long time. The climate may be such today that they felt this is the best time for passage of this particular bill. But I would like to point certain things out.

This bill tries to alter the procedures of evidence in a court of law. Traditionally, in a criminal case, we try to present evidence on the basis that the defendant has to be proved guilty beyond a reasonable doubt. However, in civil cases, the degree of proof required has always been a preponderance of the evidence. For those who are not lawyers, preponderance of the evidence means that one case in the scales of justice has to be heavier on the other side in order to win in court.

However, what we have here in paragraph 2 of the bill is a section that states that the plaintiff has to establish his case by clear and convincing evidence. Professor Wigmore, of course, would turn around in his grave if he heard this expression being presented in a civil case. Clear and convincing evidence traditionally has been expressed in criminal trials. Evidence has to be clear and convincing in order to convict a criminal defendant. By offering this particular language in this bill, we make it extremely difficult for a legitimate victim to recover.

I feel that this section is very prejudicial to the interests of the injured party. I think it should be considered carefully.

Mr. MUDGE. Mr. Lefkiades, I am going to ask Mr. Kasten to respond to that or have someone else respond to it.

The CHAIRMAN. I think it would be helpful to let Senator Kasten have a dialog between the two of them.

I am glad that you are taking that stand. That is exactly what we are here for, to hear the other side of the coin. I am just trying to be helpful to you, Mr. Lefkiades, to by letting you and Senator Kasten go back and forth.

Senator KASTEN. First of all, I do not think you meant to say that this changed the procedures that would apply in State court. It does not. There is no change in any of the procedures, as you suggested. There is a test, and as I said, what we are trying to do is pinpoint the responsibility on the party or parties. I believe this language does so. It does not change any procedures, however.

Mr. LEFKIADES. Does it change the degree and weight of the evidence? If you have a scale from 0 to 180 points, if 180 points is beyond a reasonable doubt and in the middle we have preponderance of the evidence at 90 degrees, the statement says here that clear and convincing will be between beyond a reasonable doubt and the proponderance of the evidence.

The words "clear and convincing" are traditionally used by judges in criminal trials. It seems to me that clear and convincing will be 179, 175, or 170 degrees perhaps, rather than between beyond a reasonable doubt and preponderance of the evidence. It seems to me that the language is very strong.

Senator KASTEN. I guess we could argue on that scale whether it would be at 90 or somewhere else. I want to point out, and you are probably familiar with the fact, that the preponderance of evidence is in every section except the section that you are addressing. This punitive section is the only section where we made that change, and it is made with regard to trying to pinpoint that responsibility. You are correct, we are increasing that test somewhat because we think we want to make it precise.

I do not want to quarrel with you, but I want to suggest to the group that this is not an insurance industry bill. The business roundtable has been working with us and supports this bill. The Chamber of Commerce has been working with us and supports this bill. The National Association of Manufacturers has been working with us and supports this bill. The NFIB has been working with us and supports this bill. Parts of the insurance industry have been working with us and support this bill, and there are parts of the insurance industry that has had some questions about parts of this bill based on the workmen's compensation section.

We have gone through 2 years of hearings, three different drafts, and at each step of the way we have circulated copies out to all these different kinds of groups. There are two or three different product liability alliance groups that have come together, and then you have individual industry groups. If there is one group of people who have worked the hardest for this legislation, it is the machine tool manufacturers groups. They are very concerned about what is happening to them. They are primarily smaller companies. They are primarily private-held companies, and they are the ones that have had this unbelievable experience of trying to get insurance at some kind of reasonable rates. In many cases, they have chosen to go without insurance, to go bare, and they have examples where someone has gone without insurance and has had that one claim, and they cannot even afford to protect themselves against it because the legal fees are so high.

Over 240 businesses and trade associations are in the product liability alliance. It is of interest to insurance companies, but it is much broader.

The CHAIRMAN. I would like to introduce Senator Baucus of Montana who has just arrived.

Michael, go ahead.

Mr. LEFKIADES. Another thing this bill is attempting to do is to second-guess the basic fairness of the American jury system. We are saying that these juries have been very unfair to the defendants in

these particualr cases, and we want to change the rules in the middle of the ball game.

I am not willing to accept the premise that American juries have been either unjust or unfair. I feel the bill strongly implies that, and I believe the standards are tremendously different in various States. I do not believe that this particular bill represents the majority of the population of the country. It does not represent the majority of the States in the Nation. And I believe it is a bad bill.

Senator KASTEN. We are not in any way trying to suggest that the jury process which is in effect right now is changing. I would like to ask the committee's counsel to specifically address that question. There is no intention of changing the jury system. This is Marilyn Richmond, who is staff counsel for the Consumer Subcommittee of the Commerce Committee and the person who has been the primary staff person on this legislation.

Ms. RICHMOND. As Senator Kasten pointed out, the bill was not intended to affect the jury system in any way. It was simply intended to codify the majority rule that is being applied in a majority of State courts today, which imposes a standard in design defect cases where a manufacturer knew or should have known of a product defect that caused a particular harm. It is simply the codification of that test currently being applied across the Nation that we are simply trying to accomplish.

Mr. MUDGE. Did you have another point, Mike?

Mr. LEFKIADES. Yes. What we are really talking about is trying to eliminate or seriously curtail the strict liability rules that have evolved over the past 5 years or so. If we are attempting by this legislation to stop the progress of legal thinking, that is one thing, but let's put the ball we're really talking about in the public quarter. The strict liability rules that the courts have developed are really the product of a complex mechanical society. The courts recognize the fact that the remedies are due, and I feel the juries have been very fair in verdicts that they have made.

I believe that in the long run it would be detrimental to the interests of the business community to pass this bill. It will kill the incentive for the business community to seek excellence. I believe America has excelled in the past, it is excelling right now, and it will excell in the future. I think this bill will have a detrimental effect on American business doing a proper job, the proper design, the proper research, and the proper way of manufacturing things. I believe that we are going to encourage sloppiness. We are going to encourage workmanship that is not to our best interest. And I think we encourage the shady operators or the ones with a secondary product. I believe that this council should oppose the resolution endorsing this bill.

Senator KASTEN. Can I respond to that?

Mr. MUDGE. Senator Kasten, this is Jim Rhoads from Atlanta, a lawyer.

Mr. RHOADS. Mike, being a lawyer, I cannot let a good argument go without an argument. To give you a little background, I am an attorney and a litigator, but I do not represent insurance companies. I have represented personal injury plaintiffs on occasion, but never in a products liability case. I am somewhat familiar with the area. I have

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read the bill and read most of the information that Walter provided to us before today.

I support the efforts of Senator Kasten to arrive at a uniform Federal standard for product liability. As I read the bill, first of all, it does not change the standard of the preponderance of the evidence with respect to any of the liability issues involve, except for punitive damages.

Mike, you have read subsection 2 of section 2, which defines clear and convincing evidence. But subsection 9 defines preponderance of the evidence, and as I understand it describes it correctly from my understanding of the law. If you go to responsibilities of Manufacturers, which is section 4 of the act, you find that there is liability established on a strict liability basis if by a preponderance of the evidence it is shown a number of things, including that the product is unreasonably dangerous, that in construction or manufacture it was unreasonably dangerous in design or formulation, or unreasonably dangerous because the manufacture failed to provide adequate warnings, and so on.

It does not remove the strict liability of products liability, as I understand it. I therefore do not think it encourages sloppiness on the part of businesses or anything like that. I think what it does do is to provide a uniform standard for a judge to instruct the jury on what the law is in product liability. Today, you play Russian roulette, depending on what State you end up in, and almost every State in the country is fair game for a lawsuit. You have a race to the States right now, a system where a product liability lawyer starts flying around the country, figuring out which State is the best State in which to file a lawsuit. It just does not make any sense, from the standpoint of justice or from any standpoint.

This is a bill that is subject to markup and everything else. But all this does is to begin a national debate on what the standard should be with respect to product liability cases. I think it is a good thing for small business.

Mr. MUDGE. Senator Kasten.

Senator KASTEN. I just wanted to respond to the question of the States' strict liability standard. Not all States have adopted the strict liability standard, and where States have adopted the strict liability standard, the standard often does not apply to all of the different and various kinds of cases, such as design defects. It is sometimes applied in a way that makes liability depend on a showing of fault, and there is a West Virginia case in that area deciding whether or not a product is unreasonably safe, what a reasonably prudent manufacturer's standards should have been, what those standards should have been at the time the product was made. That is essentially what we are trying to do.

More importantly, on a broader base, I would say that the existence of a system that we have today is, in some cases—and we have examples in cranes and in one or two other specific products—working against improvements in the products or the product line. Today, in these various cases, the 1980 product is being used as evidence that the 1960 product was made unsafely. So that because you have improved, they then use that against you, saying, "See, this is the way you're going it now. You made it unsafe in 1965."

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The enactment of product liability reform will in fact encourage manufacturers to make these products more and more safe. It will lessen that problem we have, where the 1980 product is being used as an example.

Mr. MUDGE. If we do not have any new light to add to the discussion, we would call for a vote.

Senator BAUCUS. Mr. Chairman, I would ask one question. Playing devil's advocate to Bob and other advocates of the bill, why cannot various States adopt a uniform product liability code similar to the manner in which States have adopted the UCC? This is an area that traditionally has been left in the hands of the States, and there are lots of exceptions. But I am curious, as a general proposition, why various States cannot adopt the product liability provisions, with some minor variations for the various States, before it comes down to a matter between Federal and State law here.

Senator KASTEN. In the late 1970's, that effort, in fact, was made. A uniform bill was developed by the Commerce Department, working with the administration at that time and people across the country in different groups. The uniform bill was agreed to, and it went out. No one State adopted the bill, as they did with the Uniform Commercial Code. There are roughly 30 or 31 States now that have adopted some form of product liability reform. They are not the same, so you have a patchwork among the States that have adopted differing versions, and you have 20 or so States that have adopted nothing. It would be my personal view that if it could have been done that way, it would have been better. But that has failed, and we have a patchwork across the country now. The only way we can get some kind of predictability and uniformity is, in fact, to pass a Federal law.

Senator BAUCUS. You are also arguing that times and conditions have changed a lot since the 1960's and 1970's? The United States is much more in the international arena? I understand that 70 percent of the products produced in the United States are in the international marketplace in one form or another. Because of those changes, with respect to product liability, we need more uniformity now than we did in the 1970's.

Senator KASTEN. The trial attorneys who opposed this bill on the Federal level also appear against the bill in every State where they have an opportunity to do so. So they try to prevent the State action that you are talking about that would have been desirable.

Mr. MUDGE. Mr. Floss.

Mr. FLOSS. Yes. Senator Kasten, I am glad you did say that it was not an insurance industry bill. However, there is only one part of that bill in which the insurance industry is interested and that is uniformity. Only if they have uniformity can they underwrite properly. Now the answer to the industry, from someone who is on the bottom level of it trying to sell to a businessman, is the fact that it is unavailable. The company will say, "We are not interested in that type of risk, and that is it." So that fellow sits there, gambling his life's savings on doing without that insurance because he cannot buy it. So it is not an industry idea. The industry just turns thumbs down. But if such a bill is passed, and there are uniform codes throughout the Nation, they then will have a better ability to underwrite it and therefore

make it obtainable by the businessman who maybe is afraid to continue in business without it.

I think the ground swell has come from a definite need and by experience. I have found business people want it. It will make insurance accessible to them more adequately and at a lower rate. I think that is what we have to keep looking at, what it will do for the businessman to allow him to engage in producing some product and thereby creating employment.

Mr. MUDGE. When the litany of supporters was read, I think the name Small Business United was overlooked, which is a large volunteer group that includes IBAW and SBANE, of which I am a member, and others. I belong to NFIB also, but the value of SBU is because of its volunteerism. Allen Neece and Tom Cator have been very helpful in bringing the values of your bill to our attention.

Senator KASTEN. I am sorry that I omitted that name, and there might have been some others I admitted. But the COSIBA group in Wisconsin has been very active also.

Mr. MUDGE. I think we have had enough comment now to form an opinion. Would someone please call for a vote? I would call for a vote. All those signifying support of Senator Kasten's proposal please raise their hand.

[A showing of hands.]

Those opposed?

[A showing of hands.]

The motion is carried. We thank you very much for your comments, Mr. Lefkiades.

Senator KASTEN. Mr. Chairman, I would like to thank you very much for your resolution in support of this legislation. I also appreciate the constructive criticism that this debate has produced. There may be ways that we can work with you and others as we continue through the markup process.

Mr. MUDGE. Senator Nunn.

Senator NUNN. I do not want to interrupt, but just to add my welcome. I understand from my friend, Jim, that you have had a busy and, we are hopeful, a productive morning. I am glad to join you again, and I appreciate all of you being here.

Mr. MUDGE. Has there been any particular enthusiasm for this that has come to your attention?

Senator NUNN. I have been bogged down in MX and arms control, and there is nothing enthusiastic in that area that you want to hear about this afternoon. I am trying to get away from that for a few hours.

The CHAIRMAN. I might add, Sam, that this is an opportunity for all these people to sit down firsthand with Senators. I think most of us will concede that Sam Nunn is probably the most able of our colleagues in the area of defense. Whether you agree or disagree with any given view on an issue with Senator Nunn, all of us will concede his expertise. He is, by far, one of the most brilliant of the Senate in this area. If you do want to use this as an occasion to raise any questions that have been in the news lately, such as MX, please do so. That is as much reason for our getting together. Maybe some of you do want to know where the new proposal sits and get Sam's ideas on it.

Mr. STANLEY. I would be interested having a contractor for some of that equipment in my backyard. I would be interested in what is happening on MX.

Senator NUNN. But not the missile itself?

Mr. STANLEY. Not the missile itself. [Laughter.]

Senator NUNN. Can I get the name of your State? I am going to write that down as a voluntary site.

Mr. STANLEY. It is the other Washington.

Senator NUNN. My in-laws live there. I will scratch that.

The CHAIRMAN. Did you want to hear about the MX?

Mr. STANLEY. I really would appreciate knowing, in all seriousness, where we might be on it because there would be contract work.

Senator NUNN. On the MX, the commission has recommended going ahead with 100 MX's. My view is that we will debate that issue very vigorously and resolve it sometime between now and October. I think it will be resolved once and for all by October. The commission has also recommended a new missile, research, and development on a smaller version that can be more mobile. My guess is that you will not see any production contracts on that for some time, but you will see research contracts. The prime contractor on the MX is Martin Marietta, so if this debate takes place as I envision it, and if we get the debate concluded by October, any subcontracts would come through Martin Marietta. I would say the time would be ripe any time from now on to go ahead and make contacts.

They will have a lot of major subcontractors, and maybe you will want to contact some of them. My office could get you a list of those pretty easily.

Mr. MUDGE. Before we move on to the next item, which will be Bruce Hopewell speaking to Senator D'Amato's proposed bill, I would ask Senator Baucus if there is anything from the people in Montana that you would like to take up with us.

Senator BAUCUS. I have been kept well abreast of the issues you have been dealing with. That topic is one that interests a lot, as well as the preceding one. I understand, too, that one of your sessions dealt with the degree to which foreign countries have nontariff trade barriers on small business products. As a member of the Finance Committee, that is a subject that is very near and dear to my heart. That committee has jurisdiction over foreign trade. Those are the three areas that interest me the most.

Mr. MUDGE. Shall we move on, then, Mr. Hopewell?

Mr. HOPEWELL. Thank you, Mr. Chairman. As many of you know, the SEC last September held a First Annual Government/Business Forum on Small Business and Capital Formation here in Washington. This 2-day forum was attended by about 200 small businessmen, venture capitalists, attorneys, bankers, government officials, and others.

This meeting resulted in a number of valuable recommendations to help small businesses in capital formation. Subsequently, registration was drawn up from 6 of the 37 recommendations agreed upon by the Securities and Exchange Commission from the Government/Business Forum on Small Business and Capital Formation. I feel it is imperative that this committee follows through on this congressional mandated conference and on impending proposed legislation which is

going to be given by Senators D'Amato, Weicker, Nunn, and others by implementing these six resolutions.

To that effect, we have passed around for your information a proposed resolution which I am introducing here to be adopted by the National Advisory Council with respect to these recommendations. With your permission, Mr. Chairman, I will read this resolution.

Mr. MUDGE. Please do.

Mr. HOPEWELL.

Proposed Resolution for National Advisory Council to the U.S. Senate Committee on Small Business.

WHEREAS these are times of high real interest rates, large numbers of business failures, and other economic hardships;

WHEREAS small business serves as the most prolific job creator in the American economy;

WHEREAS small business also continues to remain the major innovating and job creating force in our economy;

WHEREAS affordable growth capital is essential for a business to purchase new equipment or otherwise expand, crucial to the success of any small business;

WHEREAS the Securities and Exchange Commission-sponsored Government-Business Forum on Small Business Capital Formation concluded with 37 nearly unanimous recommendations on small business capital formation, several of which are included in the Small Business Capital Formation Tax Act, soon to be introduced by Senators D'Amato, Weicker, Nunn, and Cochran;

Whereas this legislation also reflects the consensus of the results of a nationwide survey of high-level small business executives;

It is now therefore RESOLVED THAT, the National Advisory Council to the U.S. Senate Committee on Small Business encourage and support legislation which would implement the best and most cost-effective recommendations of the SEC Government Business Forum on Small Business Capital Formation—particularly—allowing the creation of a small business Participating Debenture, a reduction in small business corporate tax rates, an increase in the capital gains exclusion for equity investments in small businesses, the establishment of a 20 percent maximum corporate capital gains tax rate attributable to equity investments in small businesses, a 10 percent tax credit for investments in small businesses, permitting small businesses which elect to do so to use the cash receipts method of accounting, and repeal of section 385 of the Internal Revenue Code.

Most of these measures we heard of this morning from Commissioner Evans from the SEC, which were a result of this business forum. I would like to throw the floor open at this time for any discussion on this proposal.

Mr. MUDGE. Mr. Obermayer.

Mr. OBERMAYER. One of the subjects of discussion this morning was the question of the disparity between State regulations with respect to registration before the SEC and the Federal regulations, and the problems this creates for small business. Commissioner Evans seemed to agree that this was a problem, but he felt that it was out of his jurisdiction to deal with it.

However, just before this, we have heard about a uniform set of regulations as they relate to product liability insurance. It would seem to me that if there is a mechanism whereby Federal legislation can be passed to provide uniform regulations in product liability insurance it could also be passed with respect to the registration of securities. I am totally in support of your resolution, but I am wondering whether we could add a clause to that effect to cover that aspect.

Mr. HOPEWELL. From my knowledge, I think it would be rather difficult to bring States in line with respect to SEC regulations. I

think ordinarily in some tax aspects, some have gone along with it. You might answer that, Mike.

Mr. HAYNES. If you like, I can address that issue. If the Advisory Council would like, the recommendations could be expanded to include that. You could do it through this resolution, or perhaps, you might want to propose an additional resolution on which the Advisory Council might act. With respect to this specific resolution, when it was drafted it was geared to include the recommendations which Senators D'Amato, Weicker, and Nunn have incorporated into legislation which is going to be introduced tomorrow, with the addition of two other provisions which the Council discussed this morning, that being the small business participating debenture which has already been introduced and the issue with respect to debt equity which the Advisory Council acted on last year. With respect to any deliberation or decision to expand the resolution, of course that would be for the Advisory Council to discuss and vote on.

Mr. MOHS. There is a philosophical distinction here, too, that I think is important, having to do with States rights. In the previous product liability cases, we were faced with a situation where products, through no fault of anybody, could end up in any State and be subject to any different jurisdiction. On the other hand, in the case of securities regulations, which is something I am very sensitive about and really do not like the situation as it is now, the States can change it. If their citizens care enough, they could enact legislation that would virtually copy the Federal legislation, if they cared enough to do it, but they have not.

I am not so sure I am convinced, however, that the Federal Government should step in and usurp the rights of the States on this issue.

Mr. MUDGE. Thank you.

Mr. BOWDEN. I am much in sympathy with this, and I understand it, but I have a feeling it might bog down our resolution here. So I would support it if we did not do it at this time.

Mr. OBERMAYER. Do you think it would be logistically more sensible as a separate resolution to be considered?

Mr. HAYNES. I would think that would be the case. This resolution deals essentially with tax investment incentives for small businesses. I think that the issue of States rights vis-a-vis securities laws is sufficiently broad that the Advisory Council might well consider that as a separate issue.

Mr. MUDGE. Does anybody else have any comment?

Mr. WALTER. Yes, Mr. Chairman. For my own information, since I received some of this information rather late, in view of the fact that you are anticipating a special tax treatment for the small business that qualifies under this proposed act, and in light of the revenue picture we have right now with the deficits we already have and those that are anticipated in the immediate future—which is 5, 6, or 8 years in the future—I wonder if we might not be having some real difficulties and setting up some blocks on getting through the Congress itself. We are setting up specific exemptions for things that under the present securities laws, such as unearned income, are taxed separately anyway. I wonder whether or not that might be buying some headaches that you do not really need, until you get the basic premise of the bill through. I am looking at the last paragraph here on the special tax credits.

All of this can be opened up when you get to full committee hearings in either House.

Mr. HOPEWELL. Very specifically, I think the increase of capital into small business is what we are trying to achieve with this.

Mr. WALTERS. Sir, I am agreeing totally with your concept. I am just wondering if in the political arena, to get something through, in light of all of the questions that will be raised—and quite properly so. The Treasury will get in on this. The Securities and Exchange Commission will be involved with all this. We are, in a sense, ploughing new ground. I am totally in favor of what you are talking about. I think that ultimately, we are going to come to this. Is that the proper position to use at this point, to put everything in cement up front and maybe get the whole thing shot out of the saddle before you get anywhere at all?

Senator NUNN. We are scheduled to have hearings on this in the Small Business Committee on April 20, Mr. Chairman. Without any doubt, the Finance Committee will have to have hearings on all of this, at which time the Treasury would make their report about whether they were in favor of it or against it. I would imagine that at that stage, each one of these would be broken down into the revenue loss. The revenue loss, with the kind of deficits we have now, would be a very important part of whether this legislation receives a favorable response. But there is nothing to say that the Finance Committee could not pull out certain segments of this package and go with some of them individually in a tax bill and eliminate those that have a large revenue loss or defer them until such time as the revenue picture is better.

I think each of those concerns that you have expressed will and should be considered by both this committee and by the Finance Committee in our deliberations on the bill. We recognize that same peril in introducing this, and yet we believe that each part will be looked at separately.

Mr. MUDGE. Is it the sense of the meeting that we ask then for a vote on this resolution? Is that agreeable?

All those in favor of the resolution as stated and presented in front of us, signify by saying "aye."

[Chorus of ayes.]

Opposed?

[No response.]

The resolution is carried unanimously.

Mr. OBERMAYER. I would like, if possible, with the help of the committee staff, to prepare a resolution which may be presented at the next meeting of the Advisory Council with respect to uniform policy in the registration of securities, a uniform policy among the States. We will try to draft something and present it in advance of the next Council meeting, if that is satisfactory with the chairman.

Mr. MUDGE. I think that is agreeable with everybody.

Mr. MOHS. If that is a motion, I will second it.

Mr. MUDGE. May we vote on that, please? All those in favor of Mr. Obermayer's suggestion, signify by saying "aye."

[Chorus of ayes.]

Opposed?

[No response.]

The recommendation is carried unanimously.

Senator Pressler.

Senator PRESSLER. I am just here with Herb Bowden. We are very proud of him in South Dakota. He has a small business outside of Sioux Falls. He moved there from Illinois, and he is one of the leading citizens in our State. I just want to listen a little bit.

Mr. MUDGE. One item I have on the agenda is a discussion of the Export-Import Bank, because this is the only year in our lifetimes that it will come up for reauthorization. But Glen Stout had to stay back in Minneapolis with his back. I think he needs an operation on it. We did circulate some material on the subject. There are no goals, there are no resolutions here. There were hearings that were held last Thursday by Senator Boschwitz. I know that William Draper spoke, chairman of the Export-Import Bank.

What he said is that there are $100 million out there, allocated to small business, only $15 million of which has been distributed. I am going to talk on Thursday and give testimony in front of Congressman Nowak's committee to this subject. I would give you an outline for the record, and after this we will proceed to any other subject that interests each person here for the balance of the meeting.

The points I intend to raise before the House Committee on Small Business, insofar as the Export-Import Bank is concerned, is a recommendation that a desk be created within the Eximbank that will be mandated to distribute a given percentage of funds—we suggest 10 percent of available funds—to small business and that a model be set up, based on the Sogoshoshas in Japan. If anybody is interested in this subject, Dr. Sarumi at the Baruch School, who works with Frank Gibney, who was our man in Japan for many years, a leading authority of Sogoshoshas—I have all the books that are extant on that subject. If we are interested in introducing a dialogue on the proposal, we should adopt for our society a model similar to that, using satellites for prompt information.

Prompt availability seems to be the need among all small businesses who are manufacturers and exporters. The matching rates of the French and so forth are vital, but prompt availability is also important. Mitsubishi and Mitsui and the others apparently, if they have a deal in the morning, they know whether they have the money or not by the afternoon. They do not have to wait 8 months.

We would also propose that a desk be set up at each of the 10 regional SBA offices, so that would be the person in one's district. It is impossible for people from Pierre or Sioux City to come down here every time there is a pending deal, because export is only what it is. At best, it is perhaps 10 percent of the median average small business firms who do export. You just do not come down here for every will-o'-the-wisp. But you do have to know. You have to know that day if you have a deal, because if you do not, experience shows that the French, the Swiss, the Japanese, and the British can move more quickly.

We ask that the Eximbank mandate that 10 percent of the direct loan budget be allocated for short-term competitive loans, medium-term competitive loans, and long-term competitive loans to certain qualified small businesses—those small businesses with little or no export experience.

It was interesting when those of us who first got involved in 385 last year, and this committee introduced a thought to the Senators, who then introduced a resolution calling attention to our needs, that Mitsubishi and Mitsui have a debt equity that ranges between 10.7 in 1978 for Mitsui, and Itoh's was 15.3. That will give you an idea of the disparity. I will not go any further on this matter of the Export-Import Bank, because it is a subject that interests only manufacturers.

Are there other matters any of you would like to take up with regard to small business?

Mr. FLOSS. I did send a communication to the staff here pertaining to unemployment insurance. Through a series of hearings, small employers looked for some relief in that in New York State they have to pay a premium on their own income, although as small employers they can lay everybody off and put them on unemployment, but they themselves are not eligible to go on unemployment unless they go bankrupt. Many people just have to sit and ride it out, because they do not want to lose the equity in their firm or the continuity. So they felt that it would only be fair if they could elect or opt out of unemployment insurance and, therefore, deduct that cost.

In other words, they are spending money on which they will never get any recovery. I thought that was a very good thing. But then, when you look further, and you see the application of Federal unemployment insurance, you realize that the premium they paid to their State acts as a credit on Federal, and Federal unemployment works on total payroll. So if we as one State would allow the principal of that business to opt out of the system, they could not opt out of the Federal system, because the money they normally paid to the State would no longer be paid and therefore no longer a credit against their total payroll, including their own, to the Federal. So the money would then be sent to the Federal Government, and they still would not have any chance of recovery.

So that is another thing that a State may want to do but we found out that it is not feasible for us to do it at a State level. We would have to have it changed first at the Federal level to allow sole proprietors to opt out of the unemployment insurance required by the Federal, and then the States could allow them to opt out on a State level. But the Feds must work first on that. That is something else we found in our hearings that most small businessmen were interested in, and I think it would be well worth our moving on it. It is something that is really not a popular thing. If there is no revenue loss to it. People getting out of a system that they cannot recover something for is certainly equitable and, I think, worthwhile for us to pursue.

Mrs. BALL. Did you say that there would be no revenue lost?

Mr. FLOSS. It is an insurance system. So if you say you no longer have a liability to this person, then you should no longer charge the premium for this person. So there should be no revenue loss. We are, of course, taking revenue from people who never use it, and that is some place there naturally would be an impact, but it is infinitesimal. But I think that as a matter of equity and fairness, when a man is in a position never to recover something, he should not be paying the premium for it.

Mrs. BALL. I disagree with you, I am sorry. I feel we cannot always ask for something or hope to eliminate something. As we say in America, we have to pay the piper.

Mr. MUDGE. Have other people here given thought to this issue?

Mr. WALTERS. I know what he is saying. In Arkansas, we pay a percentage of our total payroll. I never looked at it that way. I always figured that I owed some obligation to the people in my company, so I never did raise the issue and, in fact, I never heard it raised until today. So I really have no opinion either way at this moment, because you caught me flatfooted. I was not prepared to talk about it.

Mr. FLOSS. I developed this from outreaching to business people. I bring them in to seminars all around the State. We ask them what their problems are to see if we can solve them, and that is one that keeps cropping up. There is a high cost in our State for unemployment insurance. We are the 5th highest in the country, even though our benefits are down to 14th. There is something wrong with the eligibility standards.

But the point is that businessmen in my State have been asking for relief. After exploring it, I feel it can be done only on a national level first and then in the States.

Mr. BOWDEN. We recently did something like that in our State just on workmen's compensation. It did not occur to us for years that we were paying for these people when they were on vacations, when they are on sick pay, or when they had other down time. We just passed a law, which was just signed this last week, so that we may subtract any and all days these people are not at work. So this is that type of thing; I am not saying it is the same issue.

Mr. FLOSS. The only issue with unemployment is that if you do not pay it on the State level, you do not get the credit and you are going to pay it on the Federal level. There is no sense in just transferring the dollars and you are still in the same position.

Mr. LEFKIADES. I tend to agree with Mr. Floss on this. Let us talk about practicalities. It is highly unusual for the entrepreneur or the owner of a business will ever collect unemployment, unless he goes bankrupt and he has no other recourse. It is highly likely that he will start another business right away or something else. What Mr. Floss is really stating is that you are paying an insurance premium based, actuarily, on the entire work force for a person who it is highly unlikely will ever correct. Am I correct, Mr. Floss?

Mr. FLOSS. That is correct.

Mr. LEFKIADES. Let us say that the unemployment tax is 3 percent, just for comparison purposes. The 3 percent is on the entire work force. The machine operator or the janitor is likely to get laid off and collect unemployment, but that rate is based on the entire payroll. The president of the company, who naturally has the highest salary and so on, or the officers of the company, their salaries are fixed. They are figured into the unemployment premium. They are paying for something and it is highly unlikely it ever will be collected. In other words, it is money down the drain. I strongly support it. I think it is an unfair burden on business to have to pay for unemployment that it is unlikely he will ever collect. It is like having

a life insurance policy if you are never going to die. What is the point of having it?

Mr. STANLEY. I think what we are talking about is an experience that I had 11 years ago, in which a partnership, a corporation in which I was involved, went through a radical change. I found myself out right before I formed my present company. After many years of paying into that type of fund in our State, when I went in, thinking that I had it coming, I was advised that if I did, in fact, go ahead and fill out the form and collect it, I would probably be able to expect a knock on the door coming to get it plus penalties.

As I checked that out, I found out that sure enough, in my community there had been another individual who had had exactly that experience. He had to give it back with penalties. So I sat there for two-and-a-half months before I got my new business going, having paid into that fund for years and years and not able to collect a dime on it. I believe that is what we are talking about. If it is, I am very supportive of it. I had paid into a fund from which I could not collect.

Mr. FLOSS. Exactly. But you do understand what I mean that the State cannot do it because of the way you pay your Federal taxes. The Federal only takes from those people in States that do not pay as much as the standard provides. Therefore, you are just going to shift money to the Federal Government if you do not do something there first, and then have each State work backward.

Mr. STANLEY. We just have more work to do in the States, that is all.

Mr. LEFKIADES. It is a very serious tax, because there are other reasons as well. Suppose you have another investment, or you are a part-owner in another business, or you have stocks or other income. You are automatically disqualified. The chances of a self-employed person ever collecting unemployment are astronomical. I could not agree more with Mr. Floss' presentation. I think we should pass a resolution asking the committee, the Senate, or the Congress to take appropriate measures to eliminate that for the self-employed person.

Mr. MUDGE. I would offer the thought that if we have additional resolutions, they might be drawn up before the next meeting so that we have an opportunity really to think about them and consider them. I have never found that a committee did its best thinking in a resolution made on the spot. It is not so much the ideas, but the temper and the tone are sometimes improved. We think that is a subject we might take up next time, and we might then have some really thoughtful comments.

Mr. DOTCHIN. It also gives the staff a chance to look into the matter more. Quite frankly, when your correspondence hit my desk about a week ago, that was the first time I really became aware of the situation. I have one of my staff persons looking into it. It will put us in a better posture to be able to respond at that time.

Mr. MUDGE. I would like to call on Mr. Mohs and then Ms. Diener.

Mr. MOHS. I agree with that. The staff should look into it. It could be one of the reasons that this type of unemployment insurance exists is to keep people off the general welfare rolls. We might, upon investigation, discover that individual business owners do make claims more often than, say, doctors or morticians or someone else. They then would

be running in thinking they were entitled, on an actuarial basis, to escape as well. We might not have, upon statistical analysis, the great case we think we have.

Mr. MUDGE. Thank you.

Ms. DIENER. I want to comment on Mr. Floss' point. It is definitely a fact that you cannot collect. That subject has come up in North Carolina as well. I agree that it does need to be researched, but on the face of it, it seems that it is a nice little pot of money the Government is getting their hands on from which the people who are contributing can never see any benefit. If that is the case, it certainly is something the Council should deal with.

I have two other subjects I want to bring up, but I will not interrupt this discussion.

Mr. MUDGE. Could I ask then that you form a task force and work with the staff on it?

Mr. FLOSS. I will have my staff work with the committee so that we are prepared for the next meeting.

Mr. MUDGE. I call upon Mr. Bowden, Ms. Diener, and whomever else would like to have input.

Mr. FLOSS. If anybody would like to send me any case history of this, please do so. You have my address on my product liability manual.

Mr. BOWDEN. I would just point out that it may not reduce our total bill because we have not been applying. So when this is factored back, it still may come out to be almost the same bill. We may be talking only in theory, but I am for it.

Mr. FLOSS. I may answer that. Each State has its own fund. Large industry would have only a few executives and 500 employees. They are sending in an awful lot of money. But we are talking about the little business, where one guy owns the business and has two or three employees. This means that one-third of his premium, based on himself, he cannot collect. Out of his pocket, it is a big factor; to large business, it is infinitesimal. It all goes on the rating of your overall employment in your area, subject in certain States where there are credits for unemployment, so the more unemployment the higher your rate goes, and things like that.

But, no State can do anything as long as the Feds have their system, whereby what you pay in your State becomes a credit. So if a State relieves you of your dollars, you are going to send them to the Feds. That is why you have to start at the top.

Mr. BOWDEN. I can see where it is very advantageous for the very small business man, and I am for it.

Mr. WALTERS. Mr. Chairman, I have one other closing comment, as far as I am concerned. It may be a big problem in Arkansas; I do not know. This is the first time I have ever heard of it. We are on an experience rating in Arkansas. For years and years we paid the lowest experience rating you could, and I have just never heard of it being a problem. It may be a horrendous problem, but I am just not aware of it.

Mr. FLOSS. The smaller you are, the more you feel it.

Mr. STANLEY. When all funds are cut off, too, as was the case with me for 2½ months, it is a very big thing, even though I was a business owner.

Mr. MUDGE. Ms. Diener, would you like to raise another question?

Ms. DIENER. Yes, I did have two other points I wanted to raise. One I mentioned briefly at lunch, but I would like to make it a matter of official record. That is in the legislature's chase through all of the procurement maze, the revisions that we are anticipating this year, I would like to request that one specific point be addressed and research, if such is required.

In all RFP's that I have ever received—and I would say I get between 20 and 40 per month through my office—there is a nice little phrase in each one that says, "When you are submitting your technical proposal, please include samples of similar work previously done for Government agencies." I think that leaves us in what I would call a catch-22 situation. On the one hand, the new procurement regulations are coming up with all sorts of set-asides for small business, which is lovely, but if you have never done a job for the Government, how can you submit a sample to the Government of what you have done for the Government, and therefore, how can you get a job for the Government?

I believe it is something that needs to be looked into. As insignificant as it may sound for the moment, I think it is a very fundamental point to the small business sector's participation in the procurement process, being able to take advantage of all the so-called goodies that are coming down the pike. If you do not have samples to show of what you have already done, you are automatically disqualified from bidding. That is one point I wanted to make a matter of official record.

Mr. MUDGE. I will call on Bill Nourse, if I may, and then come back to you on the next item.

Bill Nourse has some comments to make on the job tax credit.

Mr. NOURSE. Shaw, thank you. As many of you know, Congress is going to be considering job tax credit kinds of concepts, as they move forward particularly with legislation designed to stimulate employment. Many of you know, particularly those of us who sit on other councils, particularly the chambers' group and Small Business United organizations, and so on, it is an issue that most of us who are active are very concerned about and care very deeply about.

We have felt for a long time that this is the year that we stood the best chance for getting some kind of jobs credit. All of you know the myriad of statistics talked about this morning, that small business creates all the jobs, and so on. There is no doubt that the tax law does not in any way stimulate what we do or reward us, if that it a proper term. But whatever term you want to use, the fact is that by risking capital, by risking individual family fortunes, and so on, the small business community creates jobs.

It not only creates jobs, but I think we overlook another aspect of what small business does. We saw it very vividly this last year and a half in Nashville. The small business community provides the stability in the jobs market. In the county from which I come, we have over 15,000 businesses, and only 3 percent of those employ over 100 people and 71 percent employ only 9 people or fewer, while 51 percent employ fewer than 5 people. It is a small business environment. It had and still has the lowest unemployment rate in the State of Tennessee, which has a very high rate of unemployment.

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I think that says something for our sector, and I am concerned. I would like your advice and discussion here, particularly in view of the fact that there may be hearings next Thursday up here in this very room on the jobs credit issue. I may be back to testify, and I really would like the sentiment of this group. What do you feel about the concept that small business ought to have some kind of a general jobs credit. I open it up for discussion.

Mr. MUDGE. Bill, that is an issue that struck me 4 or 5 years ago. I raised so much about it when President Carter was in, they had a special meeting for me over there in the Theodore Roosevelt Room in the White House, and all the top people were involved. I think one of his Atlanta lawyers had recommended to him that it be a targeted jobs credit.

In my case, I had hired nine people in our neighborhood. I told them that there was merit in the targeted approach, to hire them, but I wanted to hire the poor kids right across the street who had not gone bad but were bouncing a basketball waiting for something to happen. By having taken that away, it was a real problem. I just stopped hiring.

Frank Swain recently said that 86 percent of the first new jobs are trained by small business. From us, they go on to get their jobs in the big companies. We train them in computers. All our middle management and lesser people, in the little structures we have, are trained by us and they go on. Society should recognize to some degree that contribution that we make to the stable fabric of our society. I am fully supportive of whatever you are able to propose.

Mr. NOURSE. As I said, earlier, the timing is very much in our favor. A year ago January, some of us met with the President, and he clearly indicated his support for the concept. He called it a Human Resource Credit, I believe. He understood the fact that the tax codes in this country give all kinds of incentives to large industries to buy machinery or whatever, but we do not give anything to small business in the way of a stimulus to hire people. He said himself that the numbers are there. If every small business firm in the United States employed one additional person this year, we could really do a devastating job of reducing unemployment. I think that Congress could respond by endorsing some kind of legislation that gets at the heart of what we are talking about.

I think these are the kinds of nuts-and-bolts things that we ought to be concerned with. This is the year. We will not meet again until this fall, and I think that it is in the interest of this group to make a statement. Even though we are not prepared to discuss the issue, I think we ought to make a statement on it.

Mr. MOHS. I am not very prepared to support something like that at this point. I just cannot quite see how it would work. I am trying to think of the small businesses that I am involved in that would hire somebody because we got a tax credit. What do you do with them? If you do not need them, why would you hire them? The tax credit is not enough. I can see how a tax credit might make you go after a certain group, such as if you gave a tax credit for some disadvantaged classification, if you needed a person anyway. It might encourage you to take the disadvantaged person and maybe a person with fewer skills and bring them up to speed.

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But in terms of getting a bounty on heads that you pick up, it would have to be a very high price to get me to hire somebody that I did not need in the first place. If I needed them, I would hire them. So I am just trying to figure out what you get from this deal?

Mr. MUDGE. In our case, we took people who had not finished high school, and we could hire three or four. There is always something to paint. There is always something to chip, always something to clean up, always something to plant. Our little enterprise has work like that. We have a young man who goes to the church, the Baptist church in Mount Vernon. His mother and father are very active in the church. He is 16 years old and a very fine young man. It does not pay me to take too many of them.

I started him during his vacation, just to wrap soap samples up. There is a myriad of little things that makes our business life more pleasant and a little more efficient. We could hire three or four people like that. There is an Ethiopian I know about who tried to take his life on Tuesday; he was so discouraged. That is a family we have been carrying. Stanford is second to New York now with Fortune 500 companies. But in my place, had I known about that man—I did not even know that we had been carrying him in the church. Had I known about him, Iwould have found a place for him.

Mr. MOHS. I guess my problem is, when I think of all the millions of people who are hired annually by small businesses, to make it really worthwhile to hire somebody you would not hire otherwise, we are talking about a horrendous amount of money. Most of the people are going to be hired anyway. So how many marginal people would be hired because of the credit that would not have been hired otherwise? I am wondering if we are getting the most bounce for our buck that way?

Mr. MUDGE. When Bill presented his thoughts for a resolution, I was very strongly in favor of the thought. But we have not had enough input here on it. We have not seen it. Even though I support it, I did not know that he had it. I do not think it has been researched to the degree that it could be researched. I think those facts and figures will be found in the research, if the staff were put to it. I would like to have those ideas followed up on by the staff. In the Carter administration, a lot of figures had been developed on those jobs that were created, and then they reduced its horizons and made it targeted, which really reduced its effectiveness.

Just thinking of the disadvantage there in the community, it is another way of bringing them into the mainstream.

Mr. MOHS. If I can just say one more thing. It was with a heavy heart that I really voted for this previous SEC resolution that we had, which gave a tax credit for investment by small business and so on. What I see ourselves doing is layering more and more special privileges, Government chips for this, and a tax credit for that, all of which has to come from somewhere, either the deficit or increased taxes generally. We are all here, and we know there is no such thing as a "free lunch"; we just paid for our lunch, and no dessert either by the way. [Laughter.]

I am concerned about the SEC resolution. We know we need something, but sometimes I am worried that business asks for so many breaks which patch up one thing or help one thing, but overall we

ought to take a more statesmanlike look at it and say, "Wait a minute. Let's just tear some of this down."

Mr. MUDGE. May I call on Mrs. Hennessey?

Mrs. HENNESSEY. I am in a situation where we work lots of women, unskilled labor. When we had the WIN program, we trained those women. We took them from nothing, where they knew nothing but housework and maybe not much of that, and many of them were on welfare. They still are employed, self-employed now. Many of them are out in the field, in better jobs even than we had, and many of them are still with us. We have brought them up to skill, such as silkscreen operators and many other jobs that take some skill. We were able to train them.

I think it is a big advantage in our particular type of business to have a little bit of help while we train them. I agree with Bill.

Mr. MUDGE. Mrs. Ball.

Mrs. BALL. I would just like to say, I came to this country about 25 years ago. I spoke some English, I was a refugee from the Eastern Zone of Germany. I came to New York with $1.26 in my pocket. I think it is greatly up to the individual to make someone of oneself. While we are business men, I have always in our association, for which Larry Stanley, the man in the brown tie, can vouch, said that we should concentrate in this country on teaching.

I know we are manufacturers of nuts and bolts. I am not a teacher, although everytthing in manufacturing I think is teaching. We put a lot of emphasis here on a high school diploma. Not all of us can attain that. We have trade schools, and I think we should concentrate on trade schools preparing the youngsters so that we in industry do not have to take them and get a tax incentive or something like that. I agree with you that we constantly cannot take them. But there is a great deal of preparation that would make it easier for youngsters in particular to come into our mainstream and be prepared.

Mr. RHOADS. I have some of the same feelings that Fred has, mixed feelings about this issue. On the one hand, I believe that the educational process which small businesses like ours collectively here at the table do perform is what we do generally because it is good for our business. We do not hire people to get a tax advantage.

I know in the early days of our law firm, we were blessed with a lot of business, and we needed to hire people to take care of that business. In that year, the jobs credit had been passed. We were blithely ignorant of that. We were a partnership, and when it came time to fill out our taxes, it all came back to us, the two partners. This tax credit was like a windfall. In terms of the social reasons for that legislation, it had nothing to do with the fact that we hired the people we hired, and we got a windfall.

So I see the point that Fred is making, that if you are going to hire somebody, you are going to hire them anyway because you need them and your business requires it. On the other hand, there is a certain social utility that the overall economy gets from our taking on the job of taking "green" people, which is the kind of people we normally can buy, and making something out of those people. It is something that, as Asta is saying, the schools largely abdicate. Nowadays, the general work of the schools is to train middle management. Everybody aspires to be a middle manager, and nobody is turning out the

widgets any more. So it is really hard to get the widgets turned out. We end up training people to turn out the widgets, and somebody expects that for free. You come to me, and I am going to pay you to learn on my time, while I work an extra 15 hours a week training somebody to get done what needs to be done.

As I say, I have mixed feelings about it. I think that in this short afternoon, it is going to be difficult to explore all the issues around the tax credit issue. I really do not think I can take a position one way or the other.

Mr. MUDGE. The case that you draw illustrates the problem with our issue. You stated it clearly, that is true, and it is valid. I wonder if there is not more work to be done by disadvantaged people, more different kinds of work to be done, in manufacturing than there are in service groups, such as law firms, accounting firms, and real estate offices. Mrs. Hennessey and I each have a manufacturing enterprise, and we can see a place where we can educate young people and bring them along.

I know what she has done in Oklahoma, and it is a classic story of American business. There are hundreds and hundreds of people who are prospering in our society today because of what she has done. There are the people for whom she has done it.

Mr. NOURSE. Mr. Chairman, can I respond now to both of them? I think they raise very valid questions, and I think they need to be addressed. The point both of them are missing, which I think is important in this dialog, is that the scenario Jim points out is very true: Some companies do not need it and did not make the decision based on that, but their capital base, their capital formation, was strengthened immensely in the process. That is what is important to those of us who are in that fight. The fight of strengthening the capital base of small business is the real importance of the bill.

I would not make a decision solely on a tax credit to hire a person. I make the decision as far as timing is concerned in relationship to the tax credit, but the important thing about it is that it is an instrument to help build my capital base. It is a capital retention kind of vehicle. Now, we have given over the years enormous incentives to all kinds of capital intensive industries, to strengthen their capital base. The steel industry is a good example. They were all over this Hill testifying the last time around, and what have they done with the money? They are not even modernizing their industries. They are out buying competitive industries or industries that do not fit their industry.

In this case, we are talking about a real-life exeryday situation. Congress' numbers and SBA's numbers clearly delineate that the capital base for small business, the ability for small business to hire and do business, has shrunk since 1969. So I think, if you look at it from that perspective, Jim, it is very important. Some people are going to get a windfall out of it, but I do not think the majority are. I thing that for the majority it is a really important thing. It was important for me when I took advantage of it. I am in the process of expanding my business. I would love to hire a few more people. If that credit were available right now, in 1983, I would make the decision to hire when I get home. I would gamble on the next three or four months of accelerated recovery. The Government would be encouraging me to

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gamble. I think that is the way to look at it, and I think that is the perspective I am speaking from.

Mr. RHOADS. I do not want to have my remarks misinterpreted. I am not speaking against it, Bill. I am just not totally convinced to be in favor of it because of some of the feelings I have on the other side.

Mr. NOURSE. And I did not take it as against. I want the dialog to take place because I think we need to air it. I think we are going to see legislation, and we need to be part of it.

Ms. DIENER. I would just like to address one concern that I would have on that, and that would be, what kind of a chance does it have on the Hill because of what it would do to the tax base?

Mr. DOTCHIN. Let us hear from Ed Zayas, the minority economist for the committee. Do you have any comments? Are there any revenue estimates on general jobs tax credit and the revenue loss? Are you aware of any?

Mr. ZAYAS. Not to my knowledge. It would be substantial if it was really advertised. It was not advertised back in 1976 and 1977, when there was a general jobs tax credit. But I suspect that if we got another one or were going to get another one, one of the things we would try to insure is that word got out concerning its existence. As I just heard right here, a lot of people did not even know the last one did exist. You can be sure that if we got another jobs tax credit, it would be widely publicized and the participation would be much greater and there would be a significant revenue loss associated with it.

Mr. OBERMAYER. We were involved some years ago in a similar jobs tax credit program for our unemployed, unemployable, or difficult-to-employ people, providing on-the-job training at the same time. One thing we did was calculate what the cost was to the Government from a tax standpoint. When you compare either unemployment compensation or welfare with the cost of this program, where the Government was paying half of the person's salary, that amount, considering the tax that the person paid on his total salary received, the tax we would pay, assuming that the 50 percent we saved was taxable income, more than offset the cost to the Government.

Now, one is Federal Government and one is State government, so we are talking about different portions of the Government. But the cost was not a real one. In terms of value, first the value to us, if allowed us to hire people. We were able to work a little bit below a certain budget because we were only paying half the cost of these people's salary. So indeed this helped in terms of our capital formation. So we did hire people sooner, and we hired more people because of a lower cost to us. From a personal standpoint, people's skills were upgraded because of what they learned. They developed a feeling of self-respect which unemployed people do not have and satisfaction in acually going home with a week's pay every week. The social value was very important.

Mr. DOTCHIN. Is there a comment over here?

Mr. FLOSS. I think there is another facet to this when we talk about a loss of revenue. I think there is also another side which keeps saying, "We must put people back to work. It is better to have them working and doing something than to be on welfare or unemployment and therefore not producing anything." The other side will be saying, "Let's put more money into public works," but public works do not

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create real jobs that are going to be here after the public works are over.

So I think we must look at the other side of this coin and say, if you are going to start trading off revenue loss for lowering costs, as Art mentioned, lowering costs of unemployment or welfare where there is a tradeoff, then for goodness sake put it into real jobs, not in jobs that are just created for public works. I think that is the other side of the coin. The real job is going to stay there. If you train a man, he is now producing for you. You may, through that, expand and he has a job that will last. He now has learned that job and becomes more valuable. This assistance just helps you to make up your mind that you were not ready to expand. But it depends again on how small you are and what type of business you are in.

It would be just the incentive, as Bill said, if he could go back and he has to hire one more because he is going to get help. By the time that this credit is over, he will then have someone producing enough that he can retain him for a longer time. So I think these are the different points as these debates go on over public works versus private assistance. I think we have to consider that, too.

Mr. MUDGE. Mr. Stanley?

Mr. STANLEY. I think there is another factor that needs to be addressed, too, and that is teenage employment along with this. I represent wholesale distribution, and in wholesale distribution, not only in my own company but in other companies that I am aware of in my immediate area, there is a great deal of employment that is normally available or used to be available for teenagers. These are the people that I get to in classrooms when I am talking to students. They say, "But how can we start if we can't even get a job?" Our system, if you will, today is very difficult for that teenager who may wish to get started. Let me give you two examples of this.

One 15-year-old that I hired on a request from a fellow who was acting as a Big Brother, two months into it, I discovered that I could not have that youth out in my warehouse, which is just a package warehouse in that case, sweeping. We called the State to confirm, and they said that is correct, and of course it is backed up by Federal law. I did not have that much more work for that lad. I had to cut his hours in half because he could not clean up with a broom in my warehouse because of the legalities of it.

Our laws today also prevent me from allowing anyone under 18 years of age, from 16 to 18, taking our company's stationwagon and going over to the post office four blocks away to pick up stamps. I am finding increasingly, as I communicate around my community, that there are several teenagers who could otherwise be employed but for those types of restrictions, which were well-intentioned when they were put into place but unfortunately are over-kill.

So I think we have a broader subject to look at.

Mr. MUDGE. Yes. Are we better served if those laws that have affected all of us—because we are the ones who hired the disadvantaged to a higher degree than the big businesses—if we could get exemptions for firms that have 100 employees or less. Those charges that evolved into legislation were not aimed at us. They were aimed by the unions at the big manufacturers. We take such a personal interest in our people, and it is where people were treated impersonally to a large degree that the

unions were welcomed to protect them. But we are involved with our people. Edna Hennessey here is involved with her people.

Mr. STANLEY. That is my point exactly.

Ms. DIENER. I think we have a much broader scope here than one session can handle. One reference the gentleman was making I am sure was to some sort of a CETA program. The other one that has not been addressed is the lower minimum wage for teenagers that has been bandied around for years.

A way that I have come to solve some of these problems is that I will take them on for a half-day and pay them. The other half-day they stick around and learn the business. That is perfectly legal.

Mr. MUDGE. Mr. Bowden?

Mr. BOWDEN. I was just going to state that I do not know how many know the law already states that those in the retail business—and I am not sure whether it goes into the distributing business or not—allows you to hire these teenagers, up to six of them, and you can pay them 80 percent of the minimum wage.

Mr. LEFKIADES. It is 85 percent.

Mr. BOWDEN. So it is roughly the same minimum wage you are proposing right now. So when Larry Pressler asked me if I was able to look into it to find out, I really could not see where most of our retail businesses were going to benefit from this, and I gave him the information. I found that in our business groups at home, very few people knew about that. That is already law. So if you are not picking that up, you probably should. I think the limit is six young teenage people. That has already passed.

The other end of this is, I happen to agree to a degree with my friend from Madison down here. We are in a free enterprise business, and what the Government giveth they taketh away. I, for one, employ a lot of new people coming in, as we are expanding all the time, and I cannot think of many jobs that I would really put people on unless I had an opening. So it is a form of subsidy, and I think we have to be careful before we push this too far and turn around asking the Government to do something that we could do for ourselves. I am not saying I am totally against it, but it does rub my grain to some extent where we are asking for less government but as small business people we are turning around and asking for more help.

I do not think I would hire one more person at a lesser rate. That is just my own company, and I speak for myself.

Mr. MUDGE. Thank you, Mr. Mohs.

Mr. MOHS. I think you hit the nail on the head there. Bill mentioned in his remarks that there are two things, the social issue of training people who are having trouble finding work, but the other side of the issue that you mentioned was actually the transfer payment to small business. Because of the way this transfer payment would be administered, it would obviously go to the people who hired the most people. That might not even be an equitable way to advance small business in this country—in other words, reducing the marginal tax rates on small business might be a good bottom-line builder as well as this particular aspect. If we take the same amount of money that this would cost, there might be much simpler and more effective and maybe fairer ways to spread it around rather than the jobs credit.

Mr. MUDGE. Thank you. I would like to move on now. Mary, you had another issue, which I think perhaps will be our last issue for the day.

Ms. DIENER. Again for purposes of getting it on the record—I know we would not have time to discuss it this afternoon—something is stewing in North Carolina, which I guess is the best way I can put it. We are working on it at the State level, and they have requested that I bring it to the attention of this body. It has to do with the 8(a) program administered by the Small Business Administration.

As I understand it, and I have done some research on it, it is 95–507 that was put into effect. Originally, the law read "socially or economically disadvantaged." A couple of years ago, it was changed to read "socially and economically disadvantaged." The big fight seems to be over what is intended by "socially disadvantaged." It is clearly spelled out in some of the legislation, and the intent of the bill was never for it to have become solely a minority program, and yet SBA has elected to administer it in that fashion.

There are quite a few rumbles starting across the country. Those that I personally have heard were from women business owners, that they are being automatically excluded from participation in the program because SBA has arbitrarily decided that simply being a woman does not classify you as socially disadvantaged. I agree. I am in full accord with Asta, who mentioned earlier that merit and hard work are how you get to the top or get wherever you are, and you should not be sitting around expecting handouts.

But this ties in also with the procurement subject that I mentioned earlier. If we cannot get into Government contracts because of that cute little clause, never having done Government work previously, then through the 8(a) program we could be awarded contracts and get that experience and thus go on to be prime contractors instead of 8(a) participants.

I would like to ask the staff if they would be kind enough to research that for me, as far as the actual congressional intent of the 8(a) program when the law was passed. I know it was never meant to be solely for minorities but I think someone needs to state it officially for the Council. That is SBA's interpretation of it, and you may all be interested to note that out of three to six at the moment—some of them are graduating from the program—there are three women in the program who are not minorities. They have been able to prove social and economic disadvantage but with legal counsel. They have had to take it to court to prove it.

Mr. DOTCHIN. Let me just comment on that briefly. It is an issue that the Congress has struggled with in not only 95–507, and 96–481, where we actually set up graduation so that the 8(a) program, which is a sole-source program to try to give specific help for those business owners who are deemed to be socially and economically disadvantaged, we want to make sure that at a certain point they graduate from that program and new people come in. We achieved that in that public law, and at that time we also had a debate on this issue of socially and economically disadvantaged during a discussion of that law.

The issue was raised with respect to women. Women's groups raised the question at that time. Alan was more in the hot seat than I was at that point, and he will correct me if I am wrong as to my memory of the legislative history. The question was whether women, presump-

tively, as a group, should be socially disadvantaged. By regulation, certain groups such as Blacks and Hispanics are, presumptively, assumed to be socially disadvantaged.

Admittedly, it is one of those political issues where Congress is becoming very good at trying to veer off the course and not deal with it head-on, so the legislative history is a little muddy. But as I look back on it, I think it is clearly the possibility of any woman, on a case-by-case basis, make her position as to whether she is socially and economically disadvantaged. The system should allow that. The question I am not aware of is, does the system require that individual who believes that he or she is socially and economically disadvantaged go through all those hoops, with all those expenses. That is a question I really cannot address, but that is my memory of the history.

Ms. DIENER. I think the waters got very muddied during the time of The White House Conference, because of the fact that people did not address the issue in the context of women business owners versus women in business. It became really confused at that point. Had they elected to go strictly with women business owners, they obviously are a minority. Women in business? No, they are a majority of the work force.

Mr. CHVOTKIN. Public Law 95–507, the 8(a) program, was not addressed to women business owners but to women in business.

Ms. DIENER. It is?

Mr. CHVOTKIN. Yes; because it talks about socially and economically disadvantaged individuals, which the 8(a) program is designed to provide a mechanism to assist.

Ms. DIENER. Yes; but my problem now, Alan, is the fact that SBA is arbitrarily denying all claims from women other than minority-classified women, regardless of whether they are socially and economically disadvantaged or not. They are treating it as a minority program, as opposed to the legislative intent of the law.

Mr. CHVOTKIN. I can state pretty firmly that the program was not strictly a minority-based program. The conference report talks specifically about a disadvantaged white and Appalachian. I remember the conference report language very explicitly. Women as a class have gone in and petitioned the agency under authority set up by statute to be determined socially disadvantaged as a class——

Ms. DIENER. Well, that I do not buy.

Mr. CHVOTKIN [continuing]. And the agency has denied that application as a class. What it means is that they now have to prove both the economic disadvantage and the social disadvantage on a case-by-case basis. If the agency is now saying—and I do not know whether they are or not——

Ms. DIENER. I can show you letters from SBA.

Mr. CHVOTKIN. If they are saying, "We will not permit you to prove that you are 'socially and economically disadvantaged,' " then I think we would totally agree with you.

Ms. DIENER. I will make copies of the correspondence that I have. It is not to me personally, but it is material that has come to me.

Mr. CHVOTKIN. If you think it is proper, we will take the name off.

Ms. DIENER. I do not even know the people. I do not even know who they are.

Mr. DOTCHIN. Shaw was pulled away for a telephone call. Are there other matters that the Council wishes to discuss?

Mr. BOWDEN. I have something that is a little too lengthy to discuss now, but maybe we can get it on the agenda for next time. That is the subject of computer literacy. I see it as a real problem in small business. I see people with a great deal of fear about it. They are sitting there, knowing that they should have some knowledge of computers after a certain age. They are in small business, particularly. Their fears are such that they just stay away from it and let the time go on. It is mounting, and you can feel it mount as you go talk to small business people across our State and, even more so, internally within our business, not just small business people.

I think most of us know about it, and we are not facing it head-on. We would hope that we could get some help through vocational schools.

Mr. MUDGE. That is exactly why we want that bill. There is no more vocational school in Greenwich, Conn., because everybody has to go to Harvard. There is no more vocational school for Greenwich students in Stanford, Conn. We need these kids, and we need to train them. I am training them to run the computers in my business. We took somebody off the street and taught them how to run a computer. We are the vocational schools. Small business manufacturers are the vocational schools. We are keeping the crime down, we are building people to pay taxes, we are building people to go up in the next level of the government.

I think studies will show, as they showed before, before the Carter people knocked it out, that it is a benefit to the social fabric of our society. We are the schools for these dissipated kids.

Mr. BOWDEN. What I am talking about is the federally financed vocational schools. There are four or five in our State. I believe Iowa has 19 and Minnesota has 19 or something like that. I think 60 percent of their budget comes from the Federal Government. I am only suggesting that as maybe an answer. I do not want to discuss it further here today. I just thought that perhaps in the future we can discuss it. I see it as one of the real problems we have in business.

Mr. DOTCHIN. You will be pleased to note that the U.S. Senate is still in the Stone Age when it comes to computers around here. I get constant complaints from staff. Where the state-of-the-art is in word processing and where we are, we are still at cutting-and-pasting. We had a discussion with the staff directors about a month or two ago, and some of the chief clerks were there. One woman obviously had been in the Senate for a while. She said, "Don't feel bad. The Senate is the last institution that she knew of that had electric typewriters." So we are consistent with our overall traditions. You are right on that. It is a growing trend, and I think it is something we need to recognize.

Mr. MUDGE. I would like to thank the Senators for continuing this committee. I would like to thank the staff, Bob Dotchin, Mary Meyers, Alan Chvotkin, Mike Haynes, and all the others who contributed and allowed us to project what we think are issues that can be developed and worthy of reflection by this session.

Mr. DOTCHIN. One last comment I would make is that the transcript that is being recorded now will be edited by staff and printed for dissemination to the public, as well as to the Advisory Council members.

With a review of that transcript, there are certain items which by agreement will be on the agenda for the next time we meet in the fall. But I would encourage all of you that communication should not be in the spring and fall, so that when I see the leaves turn will be the next time we hear from you. I think it has to be a continual process for this approach to be effective. We have had that, and we need that continual input.

There will be issues that come along the way that we will be required to vote on and act on. They will have a direct interest to your businesses and affect whether we are going to create an economic climate that will continue our recovery, which is now in its early stages. So there are many challenges before us, and we will need your guidance and counsel throughout that time. We are hopeful that your communication will stay on a ready course throughout the time period until we meet in either September or October.

Mr. MUDGE. Before we conclude, I want to thank Debbie Graham and Ed Zayas also for their contribution and for helping us to keep in touch with each other.

Mr. DOTCHIN. As we have done in the past, we will probably make a release to our mailing list, highlighting the recommendations and the resolutions passed by the Council. It will be sent out to the small business establishment as well as to the various press here in Washington.

Mr. BOWDEN. Just a last-minute matter. Senator Pressler told me before he left that he is going to cosponsor S. 44. The more cosponsors we have on there the better.

Mr. DOTCHIN. It does have an impact. There are many big issues out there, like the budget and some fraud questions, with deficits, defense spending, and the like. The Council does prove to have a very useful function in raising issues that may be defined as a second-tier level of issues. They are important, but obviously when you are competing with such issues as MX, they are relegated in importance because of the time-consuming nature of defense and budget debates. So the Council did provide a very useful function in that regard.

Mr. MUDGE. Will someone please make a motion to adjourn?

Mr. WALTERS. So moved.

Mr. BOWDEN. Seconded.

Mr. MUDGE. Thank you.

[Whereupon, at 4:15 p.m., the National Advisory Council recessed, to reconvene at the call of the Chair.]

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